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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yuba)

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS VASQUEZ,

Defendant and Appellant.

C083404

(Super. Ct. No. CRF14441)

On July 29, 2014, defendant Carlos Vasquez was charged with assault with a deadly weapon, a knife (count 1).

On April 1, 2015, the complaint was amended to add count 2, assault by means of force likely to cause great bodily injury. Defendant pled no contest to count 2 in return for an agreement to dismiss count 1 and a promise of no immediate state prison time; his maximum exposure was four years in state prison. The parties agreed that although defendant was presumptively ineligible for probation due to prior felony convictions, the trial court could make an unusual case finding. The parties stipulated to the factual basis

for the plea, taken from the police report, that on July 28, 2014, in Yuba County, defendant assaulted the victim with force likely to cause great bodily injury.

On May 11, 2015, the trial court found that this was an unusual case because of the age of defendant's prior felony conviction and the fact that he had not offended in the last 28 years before the present crime. The court granted probation for two years, including 20 days in jail. The court imposed a \$300 restitution fine and a suspended probation revocation restitution fine, along with other fines and fees as conditions of probation. The court reserved jurisdiction over victim restitution.

On August 9, 2016, the Yuba County Probation Department filed a petition for revocation of probation, alleging that defendant committed a misdemeanor violation of annoying or molesting a child in Sutter County on August 28, 2015, and was convicted and received three years' formal probation on June 21, 2016.

On September 26, 2016, defendant admitted the petition's allegation. According to the supplemental probation report, defendant was observed masturbating in a public park as he watched a five-year-old female playing in the playground.

On October 24, 2016, the trial court declined to reinstate defendant's probation. The court then sentenced defendant to three years, the middle term, on count 2 in the underlying case. The court awarded 97 days of presentence custody credit (49 actual days and 48 conduct days). The court reimposed the previously imposed \$300 restitution fine, imposed the previously suspended \$300 probation revocation restitution fine, and imposed a suspended \$300 parole revocation restitution fine. The court imposed a \$40 court operations assessment and a \$30 conviction assessment. The court suspended the remaining fines and fees imposed at probation.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief

within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant. Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

/s/
Robie, J.

We concur:

/s/
Blease, Acting P. J.

/s/
Renner, J.